THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on :19.02.2007

WP(C) No.1101/2007

ALL INDIA CPWD ENGINEERS ASSOCIATION ...Petitioner

- versus -

UNION OF INDIA & OTHERS ...Respondents

Advocates who appeared in this case:
For the Petitioner : Mr Rakesh Khanna, Sr. Advocate
with Mr Daleep Kumar Dhayani
For the Respondent/UOI : Mr Gaurav Duggal

CORAM:-
HON'BLE MR JUSTICE BADAR DURREZ AHMED

1. Whether Reporters of local papers may be allowed to see the judgment? YES

2. To be referred to the Reporter or not? YES

3. Whether the judgment should be reported in Digest? YES

BADAR DURREZ AHMED, J (ORAL)

1. The petitioner is the All India C.P.W.D Engineers Association through its General Secretary, Sh. S. S. Jaiswal. This petition is directed against the letter dated 02.02.2007 issued by the Ministry of Urban Development, Government of India to the petitioner on the subject of re-verification of membership of the Association. In the impugned letter, it is noted that the petitioner association was recognized for an initial period of two years up to 26.04.2003. It is stated that at the end of the said period the Association was rendered "unrecognized". It is further indicated in the letter

that the Association, from that date onwards, did not cooperate in a willing and effective way to provide the necessary credentials to secure recognition under the Central Civil Services (Recognition of Service Association) Rules, 1993. It was, therefore, notified by the said letter that the petitioner Association remains an independent body and the Government had no further responsibility to transact with the said body.

2. The learned counsel appearing on behalf of the petitioner submitted that the question of recognition of service associations is governed by the Central Civil Services (Recognition of Service Association) Rules, 1993 (hereinafter referred to as the RSA Rules). It was pointed out that as per Rule 5, the conditions for recognition of service association are prescribed. The relevant provision is Rule 5(d)(i), which reads as under:-

> "**5. Conditions for recognition of Service Associations.** — A Service Association which fulfills the following conditions may be recognized by the Government, namely:-
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> xxxx xxxx xxxx xxxx xxxx
>
> (d)(i) The Association represents minimum 35 per cent of total number of a category of employees provided that where there is only one Association which commands more than 35 per cent membership, another Association with second highest membership, although less than 35 per cent may be recognized if it commands at least 15 per cent membership;
>
> xxxx xxxx xxxx xxxx"

The learned counsel also referred to Rule 6, which deals with conditions subject to which recognition is continued. Rule 7 provides for verification of membership. The said Rule is relevant and, therefore, the same is reproduced herein below:-

> "7. **Verification of Membership**. — (1) The Verification of membership for the purpose of recognition of a Service Association shall be done by the Check-Off-System in payrolls at such intervals and in such manner as the Government may by order prescribe.
>
> (2) The Government may, at any time, order a special verification of membership if it is of the opinion, after an enquiry, that the Service Association does not have the membership required under sub-clause (i) of Clause (d) of Rule 5."

Recognition can be withdrawn in terms of the provisions of Rule 8, which reads as under:

> "**8. Withdrawal of Recognition**. — If, in the opinion of the Government, a Service Association recognized under these rules has failed to comply with any of the conditions set out in Rule 5 or Rule 6 or Rule 7, the Government may after giving an opportunity to the Service Association to present its case, withdraw the recognition accorded to such Association."

3. It was contended by the learned counsel for the petitioner that as per the rules and the instructions issued under the RSA Rules, the question of verification of membership has to be done by the Ministry/Department concerned on the basis of information submitted by the concerned Drawing and

Disbursement Officer (DDO). For this purpose, he referred to the instructions dated 02.12.1993, which were issued in terms of the provisions of Rule 7 (1) of the RSA Rules. Instruction No.2 provides that the details of the consent letter given by the employees, to be associated with a particular association, are to be noted in a register maintained by the DDO in the format indicated in Annexure-I thereto. Instruction No.7 requires the DDO to report to the concerned authority at such intervals, as may be prescribed by the Ministry/Department, details with regard to the total number of persons belonging to each of the service associations. The proforma in which the statement is to be sent is Annexure-II to the said instructions. The proforma contains the following columns:-

> Serial No., Category, Total Number of Employees in that Category, Name of the Association, Membership as per check-off system and Remarks.

The check-off-system of verification is indicated in the Office Memorandum dated 10.03.1995. Paragraph 3.3 of the said Memorandum indicates that Rule 7(i) of the RSA Rules require that verification of membership for the purpose of recognition of a service association through the check-off system shall be done at such intervals and in such manner as the Government may by order prescribe. In this connection, it is clarified in paragraph 3.3 of the said Office Memorandum that the recognition to be granted under the rules through the check-off system would remain initially valid for two years from the date of

grant of such recognition.

4. By virtue of Office Memorandum dated 11.02.2002 it was further provided that after the initial two year period of recognition has expired, the respective Ministries/Departments etc., may draw up a schedule to carry out re-verification of membership, wherever necessary. It was further provided that after such re-verification, the recognition would be for a period of five years from the date so notified.

5. After hearing the counsel for the parties, it appears that there was no difficulty with the recognition granted to the petitioner Association for the initial period of two years, which expired on 26.04.2003. The next step that was to be taken, was to be done at the instance of the respondents in terms of the rules and the Office Memorandum, indicated above. The re-verification of the membership of the petitioner Association was required to be done by the respondents on the basis of the material available with them as submitted by the concerned DDOs in the format prescribed in the said Annexure-II noted above. The only point of dispute in the present petition is that, according to the learned counsel for the petitioner, the Association being the second association required a membership of only 15% and that requirement has been fulfilled inasmuch as, according to them, the membership is about 22%. The learned counsel appearing on behalf of the respondents, however, contended that it was for the

petitioner to have submitted the list of members for verification as the petitioner had done so in the past. Since that had not been fully complied with, the letter dated 02.02.2007 was issued. According to the learned counsel for the respondents, they have no difficulty in continuing the recognition of the petitioner Association in case the requirement of 15% membership, as stipulated in Rule 5(d)(i) of the RSA Rules, is fulfilled.

6. From the aforesaid submissions, it appears that the essential issue is with regard to whose responsibility is it to carry out the verification/re-verification. A consideration of the Rules and the Office Memoranda referred to above, indicate that while it is the responsibility of each member to submit an application, it is the responsibility of the DDO to take the said application and deduct subscription fee from such member's salary. Thereafter, the DDO is to maintain a record of all such applications and deductions and a statement giving details of each person along with his affiliation to any particular association, is to be forwarded by the concerned DDO in the proforma indicated in the said Annexure-II above. In other words, all the information, as verified by the DDO, is available with the respondents. In any event, the information, as per the RSA rules and the Office Memoranda, ought to be available with the respondent as required under the check-off system. Without carrying out such re-verification, it was not proper on the part of the respondents to have issued the impugned letter dated 02.02.2007 and, therefore,

the same is liable to be set aside.

7. In view of the discussion above, this writ petition is disposed of with the direction that the impugned letter dated 02.02.2007 stands set aside and that the respondents shall carry out a re-verification under the check-off system of the membership of the petitioner Association. In case the the re-verification reveals that the membership exceeds the minimum stipulated 15%, then the recognition would be continued as provided under the Rules. In case the membership is below the stipulated 15%, then the respondents would be entitled to withdraw the recognition, as provided under the Rules.

This writ petition stands disposed of. No order as to costs.

BADAR DURREZ AHMED
(JUDGE)

February 19, 2007
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